

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

GLEN GORE and ANGELA GORE,)
Plaintiffs,)
)
vs.) 3:10-cv-00137-RLY-WGH
)
STRYKER CORPORATION,)
STRYKER INSTRUMENTS, AND)
STRYKER SALES CORPORATION,,)
Defendants.)

**ENTRY ON DEFENDANTS' MOTION TO DISMISS THIRD AMENDED
COMPLAINT**

On December 17, 2002, Glen Gore (“Mr. Gore”) underwent shoulder surgery at Surgicare Outpatient Surgical Hospital in Evansville, Indiana. (Am. Compl. ¶ 9). At the conclusion of his surgery, a Stryker pain pump was filled with medication and implanted into Mr. Gore’s shoulder. (*Id.* ¶ 10). Plaintiffs’ claim that following implantation of the Stryker pain pump, Mr. Gore experienced, *inter alia*, “pain, [an] inability to raise his arm above shoulder level, severe degeneration in the anterior inferior humeral head, cartilaginous loss about the humeral head, and arthritis/chondrolysis.” (*Id.* ¶ 11).

This case originated in the Eastern District of Pennsylvania in July 2009 and was transferred to the Southern District of Indiana in August 2010. Shortly thereafter, Defendants filed their motion to dismiss the Plaintiffs’ Amended Complaint. At that time, the Amended Complaint consisted of six counts; a strict liability claim under the

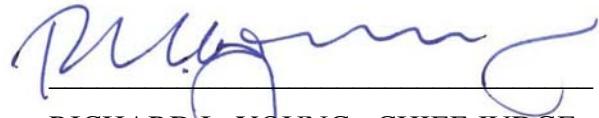
Indiana Products Liability Act, and various state common law claims for fraudulent concealment, negligent failure to warn, negligence, negligent misrepresentation, and loss of consortium. On January 20, 2011, the court granted the motion without prejudice, and gave the Plaintiffs the option of filing a Second Amended Complaint within thirty (30) days of the date of the Entry.

After Plaintiffs timely filed their Second Amended Complaint, counsel for the Defendants notified Plaintiffs' counsel of their concerns that the Second Amended Complaint did not cure the defects of the Amended Complaint. Plaintiffs, with the agreement of the Defendants, filed the present Third Amended Complaint. In their Third Amended Complaint, Plaintiffs bring claims for design defect, failure to warn, and failure to disclose defects under the Indiana Products Liability Act (Count I). Plaintiff also brings a claim for loss of consortium (Count II). Defendants' motion to dismiss is based upon the same legal arguments as those raised in its successful motion to dismiss the Amended Complaint.

Rather than respond to the substantive arguments raised by the Defendants, Plaintiffs ask the court to instead consider their Fourth Amended Complaint, attached to their Response Brief. Plaintiffs contend that the Fourth Amended Complaint "cures, if warranted, the issues raised in Defendants' argument that Plaintiffs failed to plead with sufficient specificity and that Plaintiffs' product liability claim fails under Indiana law." (Plaintiffs' Response at 3-4). It is not the job of the court to read the Fourth Amended Complaint to determine whether or not it states a claim upon which relief can be granted.

See Little v. Cox's Supermarkets, 71 F.3d 637, 641 (7th Cir. 1995) (“[The court] is not required to scour the party’s various submissions to piece together appropriate arguments. A court need not make the lawyer’s case.”). Because Plaintiffs’ failed to respond to the substantive arguments raised in Defendants’ Motion to Dismiss the Third Amended Complaint, Defendants’ motion is **GRANTED** with prejudice. (Docket # 70). Plaintiffs’ request that the court consider its Fourth Amended Complaint is **DENIED**. *See Airborne Beepers & Video, Inc. v. AT&T Mobility LLC*, 499 F.3d 663, 666 (7th Cir. 2007) (affirming the district court’s dismissal of a fourth amended complaint because of “repeated failure to cure deficiencies by amendments previously allowed”).

SO ORDERED this 29th day of July 2011.



RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

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